

Message Text

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E.O. 11652: N/A

TAGS: ETRD, FR, US

SUBJECT: ANTITRUST: FTC INVESTIGATION OF BIC PEN CORP.,
ACQUISITION OF AMERICAN SAFETY RAZOR

REFS: A) PARIS 6809; B) STATE 47994; C) STATE 39175;
D) STATE 30311

1. ECONOMIST ARTICLE (REFTEL A) SUBSTANTIALLY IN ERROR
OVER OUTCOME OF FEDERAL TRADE COMMISSION (FTC) DECISION
AGAINST BIC ACQUISITION OF AMERICAN SAFETY RAZOR. FEDERAL
DISTRICT COURT PROCEEDINGS WERE DISMISSED AS MOOT FOLLOW-
ING THE TERMINATION OF BIC'S AGREEMENT TO BUY THE PHILIP
MORRIS SUBSIDIARY.

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2. FOLLOWING IS CHRONOLOGY OF EVENTS FOR EMBASSY BACK-
GROUND: ON FEBRUARY 9, 1977, FTC FILED ITS ADMINISTRATIVE
COMPLAINT AGAINST BIC AND PHILIP MORRIS TO DETERMINE
WHETHER THE ACQUISITION OF AMERICAN SAFETY RAZOR DIVISION
OF PHILIP MORRIS COMPANY BY BIC PEN CORPORATION WOULD
VIOLATE THE ANTITRUST LAWS. ON FEBRUARY 10 THE COMMISSION
FILED A COMPANION PRELIMINARY INJUNCTION SUIT IN FEDERAL

DISTRICT COURT FOR THE PURPOSE OF OBTAINING AN ORDER
REQUIRING THAT IF THE ACQUISITION WERE CONSUMMATED, BIC
WOULD MAINTAIN READY DIVESTITURE UPON AN ADVERSE

DETERMINATION IN FTC ADMINISTRATIVE PROCEEDING. (REFTEL
D).

3. AFTER FTC FILED SUIT, PARTIES SOUGHT UNSUCCESSFULLY
TO NEGOTIATE A CONSENT AGREEMENT. THEREUPON PHILIP MORRIS
AND BIC TERMINATED THEIR AGREEMENT. (REFTEL C). SUBSE-
QUENTLY COMMISSION'S ADMINISTRATIVE PROCEEDING AND
COMPANION FEDERAL COURT PROCEEDING WERE DISMISSED AS MOOT.
(REFTEL B). IT SHOULD BE NOTED THAT BOTH PHILIP MORRIS
AND BIC STIPULATED THAT THEIR ACQUISITION AGREEMENT HAD
BEEN TERMINATED AND THAT THEY HAD NO PRESENT INTENTION TO
ENTER INTO FUTURE ACQUISITION NEGOTIATIONS.

4. AT PRESENT THERE IS NO ACQUISITION PROPOSAL BEFORE FTC.
PHILIP MORRIS, HOWEVER, HAS REQUESTED THAT FTC ADVISE
PARTIES IN ADVANCE WHETHER, IN LIGHT OF PHILIP MORRIS'
ACTIONS IN DISMISSING ITS EMPLOYEES AT AMERICAN SAFETY
RAZOR, THE COMMISSION WOULD AGAIN CHALLENGE SALE OF ITS
SUBSIDIARY. FTC HAS ADVISED PHILIP MORRIS COUNSEL THAT
BEFORE CONSIDERING ANY SUCH PROPOSAL, FTC WOULD HAVE TO
KNOW WHETHER PHILIP MORRIS WOULD BE WILLING TO SEEK AND
EVALUATE OFFERS FROM ALTERNATIVE PURCHASERS. FTC'S PUR-
POSE IS TO DETERMINE WHETHER A SALE COULD BE ARRANGED
WHICH WOULD NOT HAVE ANTI-COMPETITIVE CONSEQUENCES WHICH
IT BELIEVES WOULD OCCUR IF BIC WERE TO ACQUIRE AMERICAN
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SAFETY RAZOR.

5. BIC-PHILIP MORRIS PROCEEDINGS HAVE NO RELATIONSHIP TO
AND SHOULD HAVE NO INFLUENCE UPON FTC INVESTIGATION OF
PROPOSED ACQUISITION OF POCLAIN U.S.A. BY TENNECO, INC.
AND ITS J. I. CASE CO. SUBSIDIARY.

6. ACTION: IN ACCORDANCE WITH 1967 OECD RECOMMENDATION
EMBASSY MAY INFORM GOF THAT IN VIEW OF THE FACT THAT BIC
PEN HAS TERMINATED ITS AGREEMENT TO PURCHASE AMERICAN
SAFETY RAZOR, THE FTC ADMINISTRATIVE PROCEEDING CHALLENG-
ING THE ACQUISITION AND THE COMPANION FEDERAL DISTRICT
COURT PROCEEDING REQUESTING CERTAIN HANDLING OF ASSETS IN
CASE OF DIVESTITURE, HAVE BEEN DISMISSED AS MOOT.
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